

DETAILED ACTION

Applicant's arguments filed 5/10/11 have been fully considered but they are not persuasive. Previous rejections and other issues not addressed below are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hopkinson et al. (USPN 6746988; 6/8/04). Hopkinson et al. teach an agricultural composition comprising an agriculturally active compound and an anionic surfactant. The agricultural composition may comprise a nonionic surfactant. See abstract. The anionic surfactant can be SOPROPHOR 3 D 33 (column 1 line 66 – column 2 line 8) which has a HLB value ranging from 14 to 18. The composition can exist in the form of a flowable concentrate, suspoemulsion, water in oil emulsion (column 2 lines 9-33). The composition can further comprise adjuvants (column 2 line 34-40) and a nonionic surfactant (column 2 lines 46-53) such as ethylene oxide-propylene oxide copolymers (column 7 lines 4-28). The agricultural active compound can be a nematocide or an insecticide (column 7 lines 37-51). The insecticide can be abamectin (column 8 lines 11-36). The composition can be applied to plants and their seeds (column 10 line 62-column 11 line 6). Hopkinson et al. do not exemplify an invention comprising abamectin, Soprophor 3D33 and block polymer. However, Hopkinson et al. do suggest the

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composition of ingredients making the claimed invention obvious. Hopkinson et al. do not teach the instant ratios, amounts and molecular weight of the ingredient(s). An artisan in the field would have been expected to determine the optimum ratios, amounts and molecular weight for the ingredient(s). One would have been motivated to do this in order to develop an invention that would have been most effective in controlling insects on plants without destroying the plants.

Election Status

The elected invention comprising abamectin, Soprophor 3D33 and a block copolymer is not allowable.

Response to Applicant's argument

Applicant argue that Hopkinson does not make it obvious to select the specific components from lists of components to arrive at instantly claimed invention. Applicant argues that Table 1 in the specification provides formulations in the scope of the instant invention showing anywhere from 50 to 90% reduction in dust-off, whereas formulations having surfactant ratios outside the claimed scope provide a dust off of 20.2g. The Examiner argues that the lists in Hopkinson are finite. Therefore, it would have been obvious to deduce the instant composition from the lists in Hopkinson. The Examiner further argues that the Examples are not commensurate in with the claims. The actual formulation tested to show unexpected data is a formulation comprising abamectin, anionic sulfate surfactant or anionic phosphate surfactant plus 20% EO or 60% EO.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Alton N. Pryor/
Primary Examiner, Art Unit 1616